

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

126587-0026

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on _____

Signature _____

Typed or printed name _____

Application Number

10/541,268

Filed

April 13, 2006

First Named Inventor

Jaewan BYUN et al.

Art Unit

2617

Examiner

SAYED T. ZEWARDI

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Yoon S. Ham/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Yoon S. Ham

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☒ attorney or agent of record.
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Registration number if acting under 37 CFR 1.34 _____

2011-07-13

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
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Jaewan BYUN et al. : Confirmation No.: 6245
:
U.S. Patent Application No. 10/541,268 : Group Art Unit: 2617
:
Filed: April 13, 2006 : Examiner: SAYED T. ZEWAR
For: METHOD AND SYSTEM FOR RECOVERING FROM HAND-OFF FAIL FOR USE IN
CDMA 2000 1XEV-DO SYSTEM

THIRD PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

This paper is submitted in reply to the Final Office Action mailed April 13, 2011.¹

Applicants respectfully request review of the rejections of all claims as manifested in the Final Office Action. No amendments are being filed with this request.

This request is being filed with a *third* Notice of Appeal in compliance with 37 CFR 41.31. The appeal fee set forth in 37 CFR 41.20(b)(1) has been paid on September 23, 2008.

The review is requested for the reasons stated on the attached sheets.

¹ Hereinafter "Final Office Action."

REASONS

The following clear errors are found in the Examiner's rejections.

1. As to independent claim 3, *the applied references singly or in combination fail to teach or suggest all claimed features*, for example:

if the response signal (L2ACK) is not transmitted to the EV-DO system from the hybrid access terminal in traffic with the EV-DO system even though the EV-DO system has transmitted the traffic channel assignment signal to the hybrid access terminal, the EV-DO system again transmits the traffic assignment signal to the hybrid access terminal, and

if the EV-DO system receives the response signal (L2ACK) from the hybrid access terminal in response to the traffic channel assignment signal, the EV-DO system transmits an acknowledge signal for a reverse traffic channel to the hybrid access terminal, and then, re-transmitting the traffic channel assignment signal to the hybrid access terminal if a traffic channel completion signal is not transmitted to the EV-DO system from the hybrid access terminal, thereby performing the hand-off.

In other words, the claimed EV-DO system re-transmits the traffic channel assignment (TCA) signal even though the terminal has acknowledged it before.

The claim features find support in at least FIG. 4 and the corresponding text of the application as filed. Specifically, the application as filed discloses that if the response signal (L2ACK) is not transmitted (S432 in FIG. 4) to the EV-DO system from the hybrid access terminal in traffic with the EV-DO system even though the EV-DO system has transmitted the traffic channel assignment signal (S430) to the hybrid access terminal, the EV-DO system again transmits (S440) the traffic assignment signal to the hybrid access terminal. However, if the EV-DO system receives (S442) the response signal (L2ACK) from the hybrid access terminal in response to the traffic channel assignment signal, the EV-DO system transmits an acknowledge signal for a reverse traffic channel (S450) to the hybrid access terminal, and then, re-transmitting (S470-S440) the traffic channel assignment signal to the hybrid access terminal if a traffic channel completion signal is not transmitted (S460) to the EV-DO system from the hybrid access terminal, thereby performing the hand-off.

Tuner, as applied in the Final Office Action, does not teach or suggest the claimed re-transmission as highlighted above. Specifically, the cited portion of *Turner*, i.e., paragraphs 0108-

0118, does not at all mention any *re*-transmission of the TCA signal or the condition under which TCA is to be retransmitted (i.e., if a traffic channel completion (TCC) signal is not transmitted to the EV-DO system from the hybrid access terminal).

The Examiner has been respectfully requested ² to explain his position more clearly if the rejection is to be sustained, i.e., how the cited paragraphs 0108-0118 of *Turner*, which do not at all mention any re-transmission, TCA, TCC or the sequence defined very clearly in the claim, are nevertheless readable on the claim language.

The Examiner's response to Applicants' request is noted.³ Basically, the Examiner alleged that the claimed features "are part of known communication protocols including EV-DO networks" (emphasis added) without providing any evidence to support his allegation.

Applicants respectfully submit that the Examiner's allegation is evidentially unsupported, and request that the Examiner cite evidence of good date that proves that the claim features are indeed part of communication protocols that were known before the claimed invention was made.

2. Still with respect to claim 3, *the Examiner's obviousness rationale is illogical* and fail to meet the *KSR* requirement for a clear articulation of the reason(s) why the claimed invention would have been obvious.⁴

The Examiner admitted that *Turner* does not explicitly disclose a system for recovering from a hand-off fail,⁵ and had to rely on *Hunzinger* for such a hand-off failure recovery system. The "retransmission" features of claim 3 reproduced above are directed to a system for recovering from a hand-off fail. Thus, by the Examiner's own admission, *Turner* could not be reasonably interpreted as teaching the "retransmission" features of claim 3, yet the Examiner alleged ⁶ that such features are met by *Turner* at paragraphs 0108-0118.

The Examiner's conflicting positions do not meet the *KSR* clear articulation standard.

² January 19, 2011 Amendment, at page 9, the second full paragraph.

³ Final Office Action, at section No. 3, especially page 3.

⁴ Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. at 417, 82 USPQ2d at 1396.

⁵ Final Office Action at page 6, lines 15-16.

3. Finally and still with respect to claim 3, *the Examiner's allegation that Hunzinger teaches a system for recovering from hand-off failure is inaccurate.*

The Examiner cited⁷ Abstract, column 8, lines 20-45 and column 13, lines 7-17 of *Hunzinger* as allegedly teaching a system for recovering from hand-off failures. Applicants respectfully disagree.

The Abstract and column 8, lines 20-45 of *Hunzinger* contain essentially the same information and are directed to a recover from a forward link failure, i.e., to a hand-off procedure itself, rather than to a hand-off rescue as alleged by the Examiner.

Column 13, lines 7-17 of *Hunzinger* discloses nothing more than a hand-off process, instead of a hand-off rescue. Note especially column 13, lines 12-17 reproduced below:

... If the BS does send a handoff direction, the MS needs to update its active set accordingly. If the MS does not receive the predetermined number (e.g., N_{set} (=2 frames)) of consecutive good frames before the FRP timer expires (see reference character 110), then it terminates (drops) the connection (see reference character 130)
(Emphasis added)

It is clear from the Examiner's cited teaching of *Hunzinger* as reproduced above that if the hand-off fails, the connection will be terminated, i.e., there is no hand-off failure rescue whatsoever.

Thus, *Hunzinger*, as applied in the final Office Action, does not cure the Examiner's admitted deficiency of *Turner*, i.e., a lack of a system for recovering from hand-off failures.

For any of the overwhelming reasons detailed above at 1-3, the rejection of claim 3 is clearly erroneous and should be withdrawn.

4. The other claims depend on, or otherwise include limitations similar to, claim 3 and should be considered patentable over the art as currently applied.

Withdrawal of the rejections of all claims in view of the above is believed appropriate and therefore respectfully requested.

⁶ Final Office Action at page 6, lines 4-14.

⁷ Final Office Action, page 6, lines 3-5 from bottom.

To the extent necessary, a petition for an extension of time under *37 C.F.R. 1.136* is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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